

I hereby certify that I served the foregoing  
on \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_

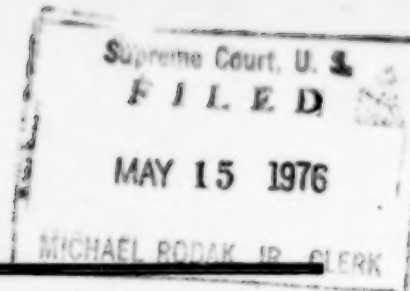
attorney for \_\_\_\_\_, 19\_\_\_\_\_, by mailing to him three true and correct copies thereof, certified by me as such. I further certify that said copies were placed in a sealed envelope addressed to the said attorney at \_\_\_\_\_

which is his regular office address, or his address as last given by him on a document which he has filed in the within entitled cause and served on me; said sealed envelope was then deposited in the United States post office at \_\_\_\_\_, Oregon, on the day last above mentioned, with the postage thereon fully paid.

\_\_\_\_\_  
Attorney \_\_\_\_\_ for \_\_\_\_\_

Service of the within \_\_\_\_\_, Oregon, this  
is hereby accepted in \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_\_,  
by receiving three copies thereof.

\_\_\_\_\_  
Attorney \_\_\_\_\_ for \_\_\_\_\_



## APPENDIX

# In the Supreme Court of the United States

October Term, 1975  
No. 75-906

THOMAS J. WALSH, JR.,  
dba TOM WALSH & CO.,

*Petitioner,*

v.

E. A. SCHLECHT, et al., as Trustees  
of Five Oregon-Washington Carpenters-  
Employers Trust Funds,

*Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF OREGON

Petition for Certiorari filed December 24, 1975  
Certiorari Granted March 1, 1976

**In the Supreme Court  
of the United States**

October Term, 1975

**No. 75-906**

THOMAS J. WALSH, JR.,  
dba TOM WWALSH & CO.,

*Petitioner,*

v.

E. A. SCHLECHT, et al., as Trustees  
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*Respondents.*

*On Writ of Certiorari to the Supreme Court  
of Oregon*

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## RELEVANT DOCKET ENTRIES

Entries in the Docket of the  
Circuit Court of Multnomah County, Oregon  
No. 389-034\*

March 9, 1973	File Complaint.
March 14, 1973	File Summons and return.
March 16, 1973	File Motion to make Complaint more definite and certain and to strike portions of Complaint.
April 11, 1973	File Notice of Deposition.
April 27, 1973	File Subpoena Duces Tecum to attend deposition.
July 18, 1973	File Order allowing in part and denying in part defendant's Motion against Complaint.
August 16, 1973	File Answer to Complaint.
August 27, 1973	File plaintiffs' Motion for leave to file Amended Complaint.
August 27, 1973	File plaintiffs' Motion to strike portions of Answer.
September 10, 1973	File Order denying plaintiffs' motions.
September 28, 1973	File Amended Answer.
November 9, 1973	File plaintiffs' Demurrer to first and fifth affirmative defenses set forth in Amended Answer.

\* Docket entries in the other four consolidated cases, No's. 389-035 through 389-038, inclusive, are identical to those in 389-034.

November 30, 1973	File Order sustaining plaintiffs' Demurrer to first and fifth affirmative defenses.
December 7, 1973	File defendant's Memorandum in opposition to plaintiffs' Demurrer.
December 7, 1973	File defendant's Second Amended Answer.
February 11, 1974	File plaintiffs' Reply to Second Amended Answer.
February 20, 1974	File plaintiffs' Request for findings of fact and conclusions of law.
February 20, 1974	File Order consolidating the five cases.
April 30, 1974	File court's Opinion.
May 3, 1974	File plaintiffs' Trial Memorandum.
May 3, 1974	File defendant's Trial Memorandum.
May 3, 1974	File list of Exhibits.
September 9, 1974	File Findings of Fact and Conclusions of Law
October 9, 1974	File defendant's Motion for attorney's fees and costs.
October 9, 1974	File defendant's Cost Bill.
October 15, 1974	File Affidavits re attorneys' fees and auditor's fees.
October 17, 1974	File Decree.

November 12, 1974	File plaintiffs' Notice of Appeal and Designation of Record on Appeal.
November 12, 1974	File defendant's Notice of Cross-Appeal and Designation of Record on Appeal.
November 14, 1974	File plaintiffs' Motion for attorneys' fees and costs.
November 14, 1974	File Order allowing plaintiffs' Motion for attorneys' fees and costs in part.
December 26, 1974	File Motion and Amended Motion to correct transcript.
February 24, 1975	File Order settling transcript.

#### **Docket Entries in Oregon Supreme Court**

November 12, 1974	Notices of appeal and cross-appeal filed in Circuit Court.
March 20, 1975	File Brief of plaintiffs-appellants.
May 14, 1975	File Brief of defendant-respondent and cross-appellant.
July 14, 1975	File Reply Brief of plaintiffs-appellants and answering Brief on cross-appeal.
August 1, 1975	File Reply Brief of defendant-respondent on cross-appeal.
September 8, 1975	Oral argument.
October 2, 1975	File Opinion.
November 19, 1975	Issue Mandate.



**COMPLAINT****(As Amended by Interlineation)**

Plaintiffs allege:

**I.**

THOMAS J. WALSH, JR. is a resident of Multnomah County, State of Oregon, and at all times material herein has been doing business under the name and style of TOM WALSH & CO.

**II.**

On or about the 12th day of September, 1969, the defendant entered into a labor agreement with the Oregon State Council of Carpenters. A true copy of that agreement is attached hereto, marked Exhibit "A", and incorporated by reference as though set forth in full herein.

**III.**

The Carpenters Master Labor Agreement referred to in Exhibit "A" to which defendant is bound reads in part as follows:

Carpenters Labor Agreement 1968-1971

**"ARTICLE XVII****HEALTH AND WELFARE**

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, parties, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or may become signatory parties to this Agreement, agree that the existing Health and Welfare Trust Fund as established January

1, 1956, shall continue in full force and effect for the purpose of providing Health and Welfare benefits for all eligible employees covered by this Agreement, and shall pay into the existing Oregon - Washington Carpenters - Employers Health and Welfare Trust Fund the sum of twenty-five cents (25c) per compensable man-hour effective May 1, 1968, to and including May 31, 1971. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement, and all applicable provisions of the existing Trust Agreement shall continue in full force and effect. The fund established by prior contributions shall be recognized as a fund held in trust, and therefore, an appropriate depository for the contributions referred to herein above."

Defendant is also bound to the Carpenters Labor Agreement, 1971-1973, a pertinent part of which reads as follows:

Carpenters Labor Agreement 1971-1973

**"ARTICLE XIV****HEALTH-WELFARE AND DENTAL**

Section 1. In addition to the wage scales listed in Schedules "A" herein, all persons, parties, firms or corporations as listed in Schedule "B", or otherwise coming under the scope of this Agreement, who are, or may become signatory parties to this Agreement, agree that the existing Health and Welfare Trust Fund as established January 1, 1956, shall continue in full force and effect for the purpose of providing Health-Welfare and Dental benefits for all eligible employees covered by this Agreement, and shall pay into the existing

Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund: FOR HEALTH-WELFARE the sum of thirty cents (30c) per compensable man-hour effective June 1, 1971; thirty-five cents (35c) per compensable man-hour effective December 1, 1971, and; forty cents (40c) per compensable man-hour effective June 1, 1972; FOR DENTAL the sum of five cents (5c) per compensable man-hour effective June 1, 1971, and; fifteen cents (15c) per compensable man-hour effective June 1, 1972. Such payments shall be made monthly in accordance with the requirements of the Trust Agreement, and all applicable provisions of the existing Trust Agreement shall continue in full force and effect. The fund established by prior contributions shall be recognized as a fund held in trust, and therefore an appropriate depository for the contributions referred to hereinabove."

#### IV.

The trust agreement referred to in Exhibit "A" and paragraph III above is the "Trust Agreement, Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund," dated January 1, 1956, as amended November 5, 1956 and August 1, 1968. This trust agreement reads in part as follows:

#### "Article II

\* \* \* \* \*

Section 9. Each contribution to the Fund shall be made promptly and in any event made so as to be received at the principal office of the Fund on or before the 25th day of the calendar month in which it becomes payable, on which date said contribution, if not then paid in full, shall be delin-

quent. . . . The parties recognize and acknowledge that the regular and prompt payment of Individual Employer contributions to the Fund is essential to the maintenance in effect of the Health and Welfare Plan, and that it would be extremely difficult and impracticable to fix the actual expense and damage to the Fund and to the Health and Welfare Plan which would result from the failure of an Individual Employer to pay such monthly contributions in full within the time provided. Therefore, the amount of damage to the Fund and the Health and Welfare Plan resulting from any such failure shall be the sum of 10 per cent of the amount of the contribution or contributions due, which amount shall become due and payable to the Fund as liquidated damages and not as a penalty, in Portland, Oregon, upon the day immediately following the date on which the contribution or contributions.

In case of failure of an Individual Employer to make required contributions to this Trust Fund the Trustees may take necessary legal action to collect such withheld contributions as well as costs of such action and any damages to the Fund or Health and Welfare Plan caused by such failure to make said contributions."

\* \* \* \* \*

#### "Article IV

\* \* \* \* \*

Section 5. The Board of Trustees shall have the power to demand and enforce the prompt payment of contributions to the Fund, and the payment of reimbursement for expenses and damages due to delinquencies as provided in Section 10 Article II. If any Individual Employer defaults in



the making of such payments and if the Board consults legal counsel with respect thereto, or files any suit or claim with respect thereto, there shall be added to the obligation of the Individual Employer who is in default reasonable attorneys' fees, court costs and all other reasonable expenses incurred by the Board in connection with such suit or claim including any and all appellate proceedings therein."

Section 11. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund and the Plan. The Board of Trustees may require Employers, and Signatory Association, any Individual Employer Union, any Local Union, any Employee, or any beneficiaries under the Plan to promptly furnish the Board of Trustees on demand such payroll records, information, data, reports or documents reasonably relevant to and suitable for the purposes of such administration of the Fund and policies. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, reports or documents. The Board of Trustees, or their authorized representatives, duly authorized in writing by one Employee Trustee and Employer Trustee, may examine the pertinent payroll records of each Individual Employer with respect to the persons benefiting from this Trust Agreement whenever such examination is deemed necessary or advisable by the Board of Trustees in connection with the proper administration of the Plan, the Fund and policies."

## V.

Plaintiffs are the duly appointed and acting trustees under the trust agreement referred to in Paragraph IV above.

## VI.

Said Carpenters Master Labor Agreements further provide in part as follows:

## ARTICLE IV

## SUB-CONTRACTORS CLAUSE

If a contractor, bound by this Agreement, contracts or subcontracts, any work covered by this Agreement to be done at the job site of the construction, alteration or repair of a building, structure or other work to any person or proprietor who is not signatory to this Agreement, the contractor shall require such subcontractor to be bound *to all the provisions of this Agreement*, or such contractor shall *maintain daily records of the sub-contractors employees job site hours and be liable for payment of these employees wages, travel, Health & Welfare, Pension Vacation, Apprenticeship and CIAF contributions in accordance with this Agreement.*

## VII.

Defendant contracted with one LLOYD JACKSON to do work covered by the Carpenters Agreement and that LLOYD JACKSON was not signatory to the Carpenters Agreement nor did defendant require said LLOYD JACKSON to be bound to all the provisions of this Agreement.

## VIII.

During the period June 1, 1972 to date, said LLOYD JACKSON employed employees within the coverage of Exhibit "A" and the above referred to Trust Agreement. Defendant thus owes a sum of money to plaintiffs, the amount of which is unknown to plaintiffs, in contributions and liquidated damages and additionally owes the plaintiffs liquidated damages from the due date thereof until said payment is made.

## IX.

Plaintiffs have demanded and defendant has refused an accounting to determine amounts which may be owed by defendant to plaintiffs as contributions and liquidated damages during the period June 1, 1972 to date by way of an audit as provided by the language of the trust agreement set forth above.

## X.

Such an accounting is so complex and intricate that justice cannot be done without resort to equity's jurisdiction in that accurate determination of the amount which defendant may owe to plaintiffs requires complete examination of defendant's and LLOYD JACKSON'S payroll records, a determination of which employees performed work coming within the coverage of the agreements referred to above, computation of the number of hours worked by those employees in the months involved, computation of contributions and liquidated damages owed on those hours worked, allowance of credits where appropriate for re-

ported or over reported hours worked, and confirmation of the accuracy of these computations through the use of accepted accounting procedures.

## XI.

Defendant, by reason of said trust agreement, is obligated to pay to the trustees for the benefit of said fund, the sum of 10% of any amount of contributions which may be found due and owing as a result of said accounting as liquidated damages.

## XII.

Plaintiffs are entitled to recovery of their reasonable attorneys' fees plus other reasonable expenses incurred in connection with this suit. \$1,000.00 is a reasonable sum to be awarded plaintiffs as attorneys' fees; and \$250.00 is a reasonable sum to be awarded plaintiffs as auditor's fees and costs.

WHEREFORE, plaintiffs pray for an order and decree of this Court as follows:

(1) Requiring that an accounting be had by way of an audit and examination of defendant's and LLOYD JACKSON'S payroll records and accounts for the period June 1, 1972 to date to determine what additional amounts may be owed by defendant to plaintiffs as and for contributions and liquidated damages.

(2) Entering judgment against defendant for whatever amounts are found as owing as a result of the above accounting, plus an amount equal to 10% of said contributions that may be found due and owing as liquidated damages.



(3) Entering judgment against defendant for \$1,000.00 as plaintiffs' reasonable attorneys' fees, \$250.00 as auditor's fees plus reimbursement of costs in connection with the above accounting.

(4) For any other or further relief which the court may deem just and equitable.

[Exhibit A to the Complaint is the Memorandum Agreement set forth infra p. 73.]

#### AMENDED ANSWER

\* \* \* \* \*

FOR A FIFTH FURTHER AND SEPARATE AFFIRMATIVE DEFENSE, defendant alleges:

#### I.

Defendant re-alleges by this reference as if fully set forth the allegations of Paragraphs I through VI, inclusive, of the First Further and Separate Affirmative Defense.

#### II.

Article IV of the 1971-1973 Carpenters Master Labor Agreement provides in full as follows:

"Article IV.

#### SUBCONTRACTORS CLAUSE

"If an employer, bound by this Agreement, contracts or subcontracts, any work covered by this Agreement to be done at the job site of the construction, alteration or repair of a building, structure, or other work to any person or proprietor who is not signatory to this Agreement, the

employer shall require such subcontractor to be bound to all the provisions of this Agreement, or such employer shall maintain daily records of the subcontractors employees job site hours, and be liable for payment of these employees wages, travel, Health-Welfare and Dental, Pension, Vacation, Apprenticeship and CIAF contributions in accordance with this Agreement.

"The Union agrees to notify the employer, person or proprietor within thirty (30) calendar days of any delinquent payment for wages, travel, Health-Welfare and Dental, Pension, Vacation, Apprenticeship and CIAF contributions owed by the subcontractor, and to further issue a certificate to the employer when these payments have been made. (Clarification: With respect to fringes the 30 day period starts on the day after the report is due to the trust administrator.)

"No work will be let by piecework, contract or lump sum direct with a journeyman, apprentice or trainee for labor services.

"NOTE: See Article V, Section 4(e), Pre-Job Conference." [Emphasis supplied]

#### III.

The underlined portions of the said Article IV, as above set forth, purport to require defendant to pay to the trust fund of which plaintiffs are Trustees monies which are not for the sole and exclusive benefit of defendant's employees, in that such payments would be expended by the Trustees from the trust in whole or in part for the benefit of employees of Lloyd Jackson and of employees of other third party employers.

## IV.

Upon the premises aforesaid, the payments which plaintiffs seek to recover in this case pursuant to the aforesaid Article IV would be illegal under 29 U.S.C. § 186, and Article IV is void and of no force and effect to the extent that it obligated defendant to make the payments claimed by plaintiffs in this case.

\* \* \* \*

## DEMURRER

Plaintiffs by their attorney, Joseph F. Cenicerros, move against defendant's Amended Answer as follows:

\* \* \* \*

## II.

Demur to defendant's Fifth Affirmative Defense on the ground that the matter alleged therein does not constitute a defense to plaintiffs' complaint.

## ORDER

This Matter having come before the Court on Plaintiffs' Demurrers to Defendant's First and Fifth Affirmative Defenses contained in his Amended Answer, Plaintiffs appearing by their attorney Joseph F. Cenicerros, and Defendant appearing by his attorney D. H. Skerritt, and arguments having been heard, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiffs' Demurrers to Defendant's First and Fifth Affirmative Defenses be and hereby are granted.

Defendant will have ten days to plead further.

DATED this 30th day of November, 1973.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the Court for trial and evidence having been presented by the parties, the Court hereby makes the following:

## FINDINGS OF FACT

1. Plaintiffs are trustees of an employee benefit trust.
2. Defendant is a building contractor who engages in general contracting work in the State of Oregon. In recent years, defendant, in addition to general contracting work, has concentrated in the construction of U. S. Department of Housing and Urban Development (HUD) low-income housing.
3. Defendant was at all material times a signatory to a Labor Agreement with the Oregon State Council of Carpenters (Pl. Ex. 1) and with the Oregon State Building and Construction Trades Council (Pl. Ex. 2).
4. Defendant employed Lloyd Jackson as a framing subcontractor on the job in question; Lloyd Jackson was a contractor, non-signatory to the Area Master Labor Agreement.
5. As a result, prior to and during the job in question, numerous meetings between defendant and various union officials were held regarding defendant's

use of Lloyd Jackson and demands to remove Lloyd Jackson from the job were made by the union officials and by their attorney on Walsh.

6. Defendant was notified by union officials and by their attorney of defendant's responsibility to pay fringe benefit contributions to plaintiffs as required by the union contract.

7. Defendant was informed by union officials and by their attorney that if Lloyd Jackson did not make the required fringe benefit contributions to plaintiffs that defendant was required under the union contract to make said payments.

8. Jackson did not make the fringe benefit payments to plaintiffs as required by defendant's contract with the Union.

9. Tom Walsh 4, Oreg. Ltd., paid Jackson the agreed contract price for his work. Jackson paid his employees on the Oak Hill project amounts equal to the fringe benefits payable to plaintiffs under the terms of defendant's contract with the Union.

#### CONCLUSIONS OF LAW

1. The labor contract required defendant to make the fringe benefit payments to plaintiffs.

2. The notice provisions of the subcontractor clause of the Labor Contract were complied with by the union officials.

3. Defendant had, in addition, constructive notice of the provisions of the subcontractor clause of the Labor Contract.

4. It is inequitable to require defendant to make payments to plaintiffs which amount to double fringe benefits to Jackson's employees. It is equitable to require defendant to make payments to those two funds which do not accrue benefits directly to the workmen—i.e., the Apprenticeship and Training Trust Fund (389-037) and the Construction Industry Advancement Fund (389-038), and inequitable to require defendant to make payments to the Health and Welfare Trust Fund (389-034), the Pension Trust Fund (389-035) and the Vacation-Savings Trust Fund (389-036).

\* \* \* \* \*

#### DECREE

These cases having been heretofore consolidated and having come on for trial before the Court sitting without a jury, and the Court having heard the testimony and examined the evidence and having entered its Findings of Fact and Conclusions of Law on September 9, 1974, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Case Nos. 389-034, 389-035, and 389-036 be and hereby are dismissed, without costs to any party.

2. Defendant's motion for an award of attorney's fees in case Nos. 389-034, 389-035 and 389-036 is denied.

3. Plaintiffs in case No. 389-037 have judgment against defendant for unpaid contributions in the



amount of \$175.01 plus liquidated damages in the further amount of \$17.50, plus reasonable attorney's fees in the amount of \$129.04, plus auditor's fees incurred by plaintiffs in the amount of \$9.15, together with plaintiffs' costs and disbursements taxed in the amount of \$31.86.

4. Plaintiffs in case No. 389-038 have judgment against defendant for unpaid contributions in the amount of \$175.01 plus liquidated damages in the further amount of \$30.00, plus reasonable attorney's fees in the amount of \$129.04, plus auditor's fees incurred by plaintiffs in the amount of \$9.15, together with plaintiffs' costs and disbursements taxed in the amount of \$31.86.

#### EXCERPTS FROM TESTIMONY AT TRIAL

Testimony of Thomas J. Walsh, Jr.

[Tr. 16-21]

THOMAS J. WALSH, JR.

was thereupon called as a witness on behalf of the plaintiffs and, having been first duly sworn on oath, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. CENICEROS:

Q Mr. Walsh, I believe you stated your name, did you not, for the record.

A Yes, sir, I did.

Q Mr. Walsh, could you explain to the Court your relationship with Tom Walsh & Co.

A I am the sole proprietor of Tom Walsh & Co.

Q When was Tom Walsh & Co., the name, registered?

A 1967 to my best recollection.

Q What is the address of Tom Walsh & Co.?

A 2839 S. W. Second Avenue.

Q Here in Portland?

A Yes.

Q What type of work does it do?

A General contracting.

Q Does it specialize is [sic] any particular type of dwellings or buildings?

A We have almost exclusively constructed apartment dwellings.

Q All over the state?

A If you were to include the last year, yes. We have done some work in eastern Oregon and also done some down on the coast.

Q Prior to the Oak Hill job, which occurred in 1971, were you a part of any other business entities, partnership, joint venture, or anything of this kind?

A I had served as a general partner prior to that time in three limited partnerships.

Q What were those?

A Tom Walsh 1, Oreg. Ltd.; Tom Walsh 2, Oreg. Ltd.; and Tom Walsh 3, Oreg. Ltd.

Q When was Tom Walsh 1, Oreg. Ltd., started?

A Formed? October of 1968.

Q And Tom Walsh 2, Oreg. Ltd.?

A Approximately May or June of 1969.

Q And Tom Walsh 3, when was it formed?

A Approximately June of 1970.



MR. CENICEROS: Mark these, please.  
(Whereupon Plaintiffs' Exhibits 1 and 2  
were marked for identification.)

Q We might as well complete it. Tom Walsh 4, when  
was it started?

A I think it was filed with the corporation commis-  
sioner on the 1st or 2nd of June, 1971.

Q Could it have been June 8, if you know?

A I don't believe so. I think June 8 was the date that  
we had initial endorsement of this low-income proj-  
ect with HUD, and if my recollection serves, the  
limited partnership would have in the normal  
course been filed with the corporation commissioner  
approximately a week before that.

MR. NEIL: Your Honor, to eliminate con-  
fusion, we have been planning to offer as an ex-  
hibit the Certificate of Partnership, which does  
show filing of the partnership on June 8, 1971, if  
you would like to put it in.

MR. CENICEROS: Could I have this marked  
as either my exhibit or your exhibit?

MR. NEIL: That's fine.

(Whereupon, Plaintiffs' Exhibit No. 3 was  
marked for identification.)

MR. CENICEROS: I will introduce Plain-  
tiffs' Exhibit 3.

MR. NEIL: No objection.

THE COURT: No. 3 is received.

MR. CENICEROS: May I approach the wit-  
ness?

Q (By Mr. Ceniceros) Mr. Walsh, I would like to  
show you what is marked as Plaintiffs' Exhibit 1  
and Plaintiffs' Exhibit 2. Relating to Plaintiffs'  
Exhibit 1, is this the memorandum agreement, the

original that you signed with the Oregon State  
Council of Carpenters?

A Yes, sir, it is.

Q Referring to Plaintiffs' Exhibit 2, is this the copy,  
not the original, but a copy of the agreement that  
you entered into with the Oregon State Building  
and Construction Trade? I show you Page 3 of  
that document, which purports to be a copy of  
your signature, since the entire document is a copy.

A Page 3 certainly appears to be my signature. I  
would have no reason to question it.

Q Do you recall entering into an agreement with the  
Oregon State Building Trades?

A Yes, I do.

MR. CENICEROS: Your Honor, I would  
move to introduce Plaintiffs' Exhibits 1 and 2.

MR. NEIL: No objection to No. 1. Let me look  
at No. 2.

THE COURT: No. 1 is received.

MR. NEIL: No objection to No. 2.

THE COURT: No. 2 is received.

Q (By Mr. Ceniceros) Mr. Walsh, what was the type  
of partnership or legal entity of Tom Walsh 4,  
Oreg. Ltd.?

A It is an Oregon limited partnership.

Q And you are the sole general partner?

A That is correct.

Q How many limited partners are there?

A Three.

Q Who are they?

A Dennis J. Lindsay, Donald G. Drake, and George  
D. Leonard.

Q Now what is the — Let me put it this way. Is Tom Walsh 4, Oreg. Ltd., still in existence?

A Yes, sir.

Q And what is its address, business address?

A 2839 S. W. Second, Portland, Oregon, the same as my office.

Q The management of Tom Walsh 4, Oreg. Ltd., is, I take it, exclusively in your control.

A Exclusively in my control and subject to regulatory agreement of the Department of Housing and Urban Development.

Q Well, what you are telling me is it's exclusively within your control within the law.

A Within that, yes, but very much within that specific piece of documentation, that's regulatory.

Q Is Tom Walsh 4, Oreg. Ltd., in a construction field at the present time?

A No, sir.

Q Was it formed exclusively for the dwellings with the Oak Hill project?

A Yes, it was formed to sponsor, to construct, to own, and to manage that low-income housing project in Salem, and only that.

Q Would you explain the background of how you in your capacity, whatever capacity, became involved in the Oak Hill project.

A Very, very briefly. If at any point you want, I would be happy to go into more detail. As an individual I made application to HUD for a feasibility commitment. A commitment was issued to provide financing and subsidy for that project in Salem.

The limited partnership was formed, as is generally the case in this type of development, to sponsor, to construct, and to own that project. A firm commitment was issued by HUD to the partnership upon submission of plans and specifications, and sometime in the middle of June—Carl may have the document—initial endorsement, which is to say the final step in providing for the mortgage financing and provisions for the ultimate subsidy were granted by HUD to the partnership.

\* \* \* \* \*

[Tr. 23-37]

Q When was the agreement with HUD and Tom Walsh 4 signed?

A It would have been approximately the 15th of January,\* 1971.

Q So at the time of that signing had you contracted with any subcontractors to be used on the job, on the Oak Hill job?

A Yes. Usually after we receive—

Q Not usually. If you will confine yourself to this particular job. Had you lined up any subcontractors for the Oak Hill job?

A Oh, yes. The time is such that they have to be. After the firm commitment is received, then everything has to be put in order, the selection of all subcontractors in a significant number of cases.

Q You lined up the subcontractors then under your name.

A No. The subcontracts were all with the partnership.

\* Reporter's error—word should be "June."

- Q No, not as executed but as initially negotiated.
- A I would have handled the negotiations personally.
- Q Now the contract with Lloyd Jackson was signed June 15, 1971, was it not?
- A Yes.
- Q Now when did you first approach Mr. Jackson about doing the framing and other work on the job?
- A I would have first talked to him probably the third week in May.
- Q Was the initial contract by telephone or by letter?
- A By telephone.
- Q Did you ask for bids?
- A Yes. We had advertised seeking subcontract bids I believe in both the Statesman and the Capitol Journal of Commerce Portland.
- Q Do you have with you the advertisements for bids?
- A No, sir, I don't.
- Q Can you provide them, say, tomorrow morning?
- A I could sure look. Very often we keep that kind of thing in our file because we carry an equal opportunity logo on the advertisements and keep them in the file. I do not want to guarantee that I could produce them. I would be more than happy to search our files tonight. I think I can.
- Q Do you have your correspondence file with Mr. Lloyd Jackson?
- A Yes, our correspondence file would be any written communication we have with him.
- Q Do you have that here?
- A No, I don't.

- Q Would you bring that tomorrow?
- A Certainly.
- Q What contract did you let to Mr. Jackson on the Oak Hill job?
- A The partnership executed with Lloyd Jackson the subcontract covering framing, siding, and I believe all finish cabinetry items.
- Q Now did Mr. Jackson, to your knowledge, have a contract with a union? Was he a union contractor?
- A At that time I was unaware of whether he was union or non-union.
- Q When did you become aware of his status?
- A On the 21st of June.
- Q And what did you find out?
- A I found out from Earl Kirkland that he was non-union.
- Q Now Earl Kirkland, what is his capacity? Would you explain that for us.
- A I believe at that time Earl was executive secretary of the Portland Building & Construction Trades Council.
- Q Where did this notification take place?
- A In Mr. Kirkland's office in the Portland Labor Center.
- Q How did it happen that that meeting took place?
- A He called me on the telephone. My office is two blocks from there. He said he thought we had a possible problem in Salem. Could I drop down to his office.
- Q And I take it you did.
- A Rather quickly.



Q Who was present at that meeting?

A Mr. Kirkland, Bob Stanfill, and myself.

Q Who is Bob Stanfill?

A He is, I believe, the executive secretary of the Oregon State Building & Construction Trades Council.

Q Now both Mr. Kirkland and Mr. Stanfill are obviously union officials.

A Correct.

Q What did they inform you at that time?

A Earl asked me if we had signed the contract with Lloyd Jackson, and I said yes; and he then informed me he was a non-union carpentry subcontractor.

Q What was decided at the meeting, if anything?

A Nothing was really decided. I pointed out to Earl I guess two things. One, that it being a federally assisted job, that it was bound by Davis-Bacon. So there was nothing at issue where we were putting union contractors at a competitive disadvantage because of a non-union contractor paying lower wages. And, secondly, that in our rather extensive search in the mid-Willamette Valley area, that Mr. Jackson was the only framing subcontractor that we could locate who was able, strictly in terms of manpower, the size of the job, to meet our qualifications to do the work. I think we had had one other — only one other framing bid submitted, and it was from a very, very small three or four-man firm unable to handle a job of that size with the time requirements.

Q Did Mr. Kirkland or Mr. Stanfill at this meeting

advise you of the consequence of having a non-union sub on that job?

A Not specifically. He said it was going to cause problems. At the very same meeting, the same issue was brought up about Dayton Plumbing Company. My response was much the same. The only one capable of doing the job that submitted a bid.

Q Could you be a little more specific? It was going to cause problems?

A Yes, it was going to cause problems. We had the possibility of pickets, and we had a responsibility to see both that wages and fringes were paid.

Q You say that he stated that you had a responsibility to see that fringes and wages were paid?

A Yes.

Q Did he elaborate on that?

A No.

Q Did you at that time have a copy of the carpenters agreement?

A Not to my knowledge I did not.

Q You signed Plaintiffs' Exhibit 1. Was it not in the booklet —

MR. CENICEROS: Mark this.

(Whereupon, Plaintiffs' Exhibit 4 was marked for identification.)

MR. CENICEROS: May I approach the witness, Your Honor?

THE COURT: You may.

Q (By Mr. Cenicerros) Was it not in a booklet marked Plaintiffs' Exhibit 4, which is a booklet with three copies of a memorandum agreement in the rear,



the last three pages.

A No, sir, to my knowledge it was not. I recall specifically meeting with Swan Nelson and an older gentleman. I want to say Bailey, but that's not correct. Dan Frazer. Meeting with Nelson and Frazer in '69. As I recall, I signed the memorandum agreement, and there was an understanding that the master agreement would be sent to me. I believe they were either out or it had just been reprinted. It was some time, much, much later that I came into possession of this. I think it was during our discussions in the summer of '71.

Q Now were you given a copy of the memorandum agreement?

A Yes.

Q You had a copy of the memorandum agreement. When you signed the Building Trades Agreement in 1970, were you given a copy of that?

A Yes.

Q So at the time of this meeting at Mr. Kirkland's office of June 21st you had at least a copy of the memorandum agreement and a copy of the Building Trades Agreement in your records.

A In our files, yes, sir.

Q What did you tell Mr. Kirkland about the resolution? You mentioned that you had told him about two things. Jackson was the only subcontractor — or, excuse me, framing contractor and that the job was subject to the Davis-Bacon Act. Did you say anything else?

A No, I don't recall anything specifically even perti-

nent to that issue being discussed at that time.

Q But he did inform you that you were responsible for the wages.

A Responsible for the payment of wages and fringe benefits.

Q Did you tell Mr. Kirkland or Mr. Stanfill at that time that you were not a union contractor on that job, on the Oak Hill job?

A No. I believe we discussed that to the best of my knowledge the remainder of the subcontractors would be union. We knew who the electrical subcontractor would be. We knew the excavating subcontractor, the drywall subcontractor, the finish hardgoods subcontractor.

Q Was it your intention to maintain as good a relation with the unions as possible under the circumstances?

A Yes.

Q But to get it clear, you did not tell Mr. Kirkland or Mr. Stanfill about any contention that, as far as the Oak Hill job was concerned, you were a non-union general.

A No, I don't think the question ever came up was I a union or a non-union. We were talking about those two specific subcontractors.

Q Now at the June 21st meeting was another pre-job conference arranged?

A No.

Q Let me explain. In the depositions there was some confusion as to the definition of a pre-job conference. I take it there was a conference between

yourself, officials of HUD, where no union personnel were present, prior to the Oak Hill job.

A That is correct. That's not what I call a pre-job conference.

Q Now at the June 21st meeting with Mr. Kirkland, did he not arrange another meeting before the Salem Building Trades which was subsequently held on June 28?

A No, sir, he made no such arrangements.

Q Who made those arrangements? Was there a meeting on June 28?

A No, sir, there was not.

Q Was there a meeting on June 30th?

A Yes, sir, there most certainly was.

Q Was it before the executive committee of the Salem Building Trades, a meeting?

A It was with George Reed — I don't know who the members of that executive board are. I can tell you approximately who was here. George Reed was there from the plumbers. I think he is also secretary of the Salem Building Trades. Herb Jennings was there representing the carpenters. Mike Dye was there as their attorney. There was a gentleman whose name I do not remember who was there from the laborers, and there may have been somebody there from the painters union.

Q Were sheet metal workers present?

A Not to my recollection, but I certainly wouldn't —

Q There were several gentlemen there from the union?

A I would say possibly five, possibly six.

Q And this was held in the Labor Center in Salem?

A In Salem, yes.

Q I might indicate that their records show, as the evidence will come out, that it was on June 28. If you say June 30, I don't think it matters that much. At any case, there was a meeting, a subsequent meeting.

A Yes.

Q Now what occurred at that meeting?

A It started out with George Reed telling me in effect to get rid of the two non-union members.\* I told him that just because they were non-union that I could not break their subcontracts. I had signed contracts with them that only for cause could I or would I dismiss them. There was a mention very similar to Mr. Kirkland's of approximately ten days before, "Don't you realize you are responsible for the payment of wages and fringe benefits?" I said, I recognize that I am responsible for those. You have got to understand, gentlemen, that the job is governed by Davis-Bacon. Each subcontractor and myself as general contractor are required to submit to HUD weekly payroll reports and show that each man has been paid not less than the prevailing wage and that under Davis-Bacon those fringe benefits have been paid.

Q Was it your impression under the Davis-Bacon Act that you were required to make the payments to the men, or could you make them to a trust fund?

A You can make them to either. Well, on the form, which I gather has been derived pursuant to Davis-

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Reporter's error—word should be "subcontractors."



Bacon, there are two boxes on the back. You check one or the other that fringe benefits have been paid in cash to the men or to an approved trust fund for the benefit of the workmen.

Q So you had no impression that you were required — that the Davis-Bacon Act required the fringes to be paid to the men.

A No, I was not aware at that time. Much later I think Carl may have mentioned it in his opening remarks. I was not aware at that time that for a non-union or a non-union member that Davis-Bacon could be satisfied by the payment of his benefits to a trust fund. I was under the impression that the trust operated for the benefit of union members.

Q You have operated under a lot of these Davis-Bacon Act projects, have you not?

A Yes, sir.

Q Don't they customarily have a meeting between the officials of HUD? Mr. Headley probably comes down, and you are instructed on filling out a certified payroll record.

A Yes. I think probably after our first job we seldom got into filling out forms. We have a gal in the office who does them and who supervises the subs.

Q You are given a packet of paper containing instructions. Whether you know them or not, you are given it, are you not?

A Correct.

Q Now did you tell anybody at that meeting that the fringes were being paid by Mr. Jackson to his men?

A I don't believe it came up at that meeting. I think

it came up at the meeting on June 21st with Mr. Kirkland and Mr. Stanfill that if that was an issue and Lloyd was non-union, he was nonetheless required to make those payments. They would in that case, I assume, be paid to the men.

Q Now were you told at that meeting by Mr. Dye that the subcontractor clause required you to be responsible for the payments of fringes or wages?

A Much in the context I have already said that I was responsible to see that prevailing wage and the fringe benefits were paid.

Q Was the subcontractor clause mentioned by name?

A No.

Q Did you tell Mr. Dye or anybody present at that meeting that you were not bound by a union contract?

A No.

Q I take it, to cut this down, there were a series of meetings, were there not, with union officials about the problem at Oak Hill?

A There was a series of meetings. I described them more about the resolution. The series of meetings, to cut the whole thing short, that took place then over the months of July and August, which Mr. Coles was present at least two and possibly three, pretty much exclusively concern themselves with efforts on the part of union carpentry officials and with some assistance from me to bring Lloyd Jackson's operation into the union.

Q During any of those meetings, and I have them on June 28, August 2, August 10, and August 23 —

- A There are others in July as well. I think you have touched on the major ones.
- Q At any of those meetings were you told by any union official present that you had to pay the fringes to the trust fund in Lloyd Jackson — you would be responsible? You had to pay the fringe benefits for Lloyd Jackson's men?
- A No. The fringes never came up again. Those meetings were all in a very positive sense. Either Lloyd or his son present at a number of them, not all of them but a significant number of them.
- Q I am just referring to the ones you were present at.
- A That's all I am talking about. The subject of fringes anyway never came up again after the June 30th meeting.
- Q Was the subcontractor clause referred to by name at any of those meetings?
- A No.
- Q Now in any of these meetings did you tell any of the officials present that you were not a signatory to any union contract?
- A No.
- Q Did you at that time believe you were bound by union contract, that you as a general were a union contractor?
- A Sorry. You have to restate the question.

MR. NEIL: I think that's confusing, Your Honor. He is saying, "You as a general." The question\* has been that Tom Walsh 4 was the general

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Reporter's error—word should be "evidence."

- on this project. He obviously has been general on other projects. I think he should be clear as to what he is talking about here.
- Q (By Mr. Cenciceros) All these meetings concerned the Oak Hill job?
- A Yes.
- Q You were representing Tom Walsh 4 at these meetings, were you not?
- A No. What I was really doing there was as an individual who could bring union and specifically carpenter union officials together with Lloyd Jackson, in whom they had a major interest in organizing. The subject was not specifically the Oak Hill job. It wasn't really very indirectly the Oak Hill. It was, how do we bring Lloyd Jackson and his substantial number of employees into the carpenters union? That was what we were striving for.
- Q He had about six carpenters on the Oak Hill job, did he not? It varied, but that was about the average?
- A Oh, I think the average was at least that, and as they were in different phases, they were different people. I think, if my recollection serves correctly, Lloyd probably had 25 or 30 employees at that period of time.
- Q Not at the Oak Hill job.
- A No, on a number of jobs. I think he probably in peak times was running— We could check. You may have the payroll records with you. I think some weeks—Well, I know it ran over on to two sheets, and they probably list a dozen employees a



sheet. So he may have had 15 to 18 employees on the Oak Hill job at some times.

Q When you were told by any of these union officials you were responsible for the wages and the fringes, it was at meetings concerning the Oak Hill job, was it not, and specifically Lloyd Jackson?

A That subject was discussed twice, the meetings of June 21 and June 30.

Q At either of those meetings did you tell them—and I believe you answered “no,” I will ask you again. Did you tell them that you were not bound by the union contract? That the general contractor, Tom Walsh 4, Oreg. Ltd., was not a union contractor?

A No, sir. That subject did not come up.

\* \* \* \* \*

**Testimony of Michael Dye**

[Tr. 80-83]

**MICHAEL DYE**

was thereupon called as a witness on behalf of the Plaintiffs and, having been first duly sworn on oath, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. CENICEROS:

Q Mr. Dye, what is your occupation?

A I am an attorney.

Q Are you a member of the Oregon Bar?

A Yes, I am.

Q And where is your office?

A In Salem.

Q Mr. Dye, do you represent the Building Trades in the Salem area?

A That's correct.

Q I would like to call your attention to June of 1971. Did the Oak Hill project come to your attention in your function as an attorney?

A Yes, it did.

Q How did it come to your attention?

A Well, as I indicated on my deposition, two ways. One is the project is directly behind our offices, about a block behind, so it came to my attention because I noticed it was there. Secondly, so far as the labor problems, which is the problem you are referring to, Mr. Reed, who at that time I believe was secretary of the Salem Building Trades Council, contacted me about it with some problems that he was having with Mr. Walsh and various members of the Trades Council were having with Mr. Walsh.

Q Now did you attend a meeting at which Mr. Walsh was present?

A Yes, I did.

Q And when was that?

A The latter part of June. I also indicated in the deposition. I couldn't give you an exact date, but I would say it would have been within the last two weeks of June, 1971.

Q And who was present at that meeting?

A Mr. Walsh was. Mr. Reed was. I was present. Mr. Glen McCall was present, who was secretary-treas-

urer of the I.B.E.W. Electrical Workers Local. I believe Bob Fisher was there, who was the secretary of the laborers in that area. Perhaps one or two other members.

Q Was Mr. Jennings there?

A Either Mr. Jennings or Mr. Meyers was there or both. I don't have any specific recollection of which one. I know the carpenters were represented, but I couldn't tell you which one was.

Q Now about how many people altogether were there?

A I would say between seven and ten.

Q How long did the meeting last?

A Approximately an hour. I was told it lasted approximately an hour. I would say I was not there more than perhaps twenty minutes.

Q The meeting continued after you left?

A Yes.

Q What was your function there? What were your duties?

A My primary function at that meeting was to inform Mr. Walsh of how the various locals that were concerned about some problems on the job—and in particular, laborers, carpenters, and plumbers—viewed his having non-union carpenters on that job, and to inform him of what we felt the course of action we would take if he did not correct it.

Q What did you tell Mr. Walsh?

A I told him that as far as we were concerned, he was responsible for some substantial amount of damages if the action continued which was going on. I indicated to him that I felt that he was re-

sponsible for damages in a number of areas. One of the areas would be to the various locals involved for breaching the contract. In particular, having non-union contractors there. And he was responsible then for possibility of loss of wages for members that were on the seniority list, which is a questionable thing; also for the loss of dues revenue to the unions for having non-union members involved; and additional loss of initiation fee to the unions for non-union people there; and very specifically, because of the agreement that I had learned he had signed with the carpenters and also the Building Trades Council, his liability to various trust funds involved.

Q What did you tell him? Obviously you don't remember the exact words, but the substance of what you told him on the latter point, his responsibility on the fringes.

A I indicated to him that because of the agreements that were signed, I felt that he would be responsible to the various trust funds involved, and particularly the carpenters and plumbers because I didn't have any specific knowledge of the agreements with the laborers, so I have to exclude that part of it; but as far as the plumbers and carpenters were concerned, direct liability to the various trust funds involved under their respective agreements for breaching the subcontractor clause of the Oregon State Building Trades Council agreement they signed, and also to my understanding they signed the carpenters agreement, too.

\* \* \* \* \*



[Tr. 98]

Q Do you recall making a statement at either of the meetings to Walsh that even though Lloyd Jackson is paying the fringes in cash to his men, that Walsh, if he continues on the job, will also have to pay them through the trust funds?

A Yes. No question about that, because the subject came up.

Q Did you tell him that? That's the question.

A In those words?

Q Yes.

A I doubt if I said it in those words.

Q Did you make that known to him?

A Yes.

Q How?

A By conversation with him we had, because—

Q Tell me— Excuse me, go ahead.

A Mr. Walsh, one of his positions at that meeting was that—

Q Which meeting?

A At the June meeting. Was that possibly he would not have to incur liability because the fringes were being paid via cash to the men to come up to the standards of Davis-Bacon. I think I indicated to him—in fact, I know I did, but the exact words I cannot tell you—that irregardless of that, there is still a responsibility contractually to the carpenters trust fund and possibly the plumbers trust fund.

\* \* \* \* \*

[Tr. 101-102]

THE COURT: I am curious about one thing. You say you talked to Mr. Reed since the deposition was taken in February on this rather critical issue of whether there was discussion that Walsh would still have to pay the funds even though direct payments were being made to the men.

THE WITNESS: I think, if I can refer to my depo, when he was talking about it, I think the question was, "QUESTION: Was there any discussion at that meeting whether or not Jackson was paying the fringes directly to his men? ANSWER: I don't believe so at that meeting." And as to that specific meeting I think that was in error. As to whether Mr. Walsh was directly responsible to the trust funds, there is no doubt in my mind that that was explained to him and covered before, but as to that question alone, I think I was in error.

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Testimony of Victor Lloyd Jackson

[Tr. 103-106]

VICTOR LLOYD JACKSON

was thereupon called as a witness on behalf of the Defendant and, having been first duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEIL:

Q Would you state your name, please.

A Victor Lloyd Jackson.



Q Where do you live, Mr. Jackson?

A In Salem, Oregon.

Q What is your business?

A I am a framing contractor.

Q Were you involved in the Oak Hill project in Salem?

A Yes, I am.

Q And what role did you have in the job?

A I did the framing, the foundations, and the finish.

Q By "I," you mean you and employees working under you?

A Right.

Q On that job were you operating as a proprietorship?

A Yes.

Q And did you enter into a subcontract, a written subcontract on that job?

A Yes, I did.

MR. NEIL: Could this be marked as a Defendant's exhibit and be shown to the witness?

(Whereupon, Defendant's Exhibit A was marked for identification.)

Q Is that a signed copy of the subcontract you entered into?

A Yes, it is.

MR. NEIL: We ask that Exhibit A be admitted, Your Honor.

MR. CENICEROS: Could I see it, please?  
(Pause.) No objection.

THE COURT: It will be received.

Q (By Mr. Neil) Did you understand this to be a HUD sponsored project, Mr. Jackson?

A Correct.

Q Have you worked on other HUD projects also?

A Yes, I have.

Q What was your understanding on the Oak Hill project as to what level of wages had to be paid to your men?

A It was called so-called prevailing wages described by HUD.

Q And what does that prevailing wage consist of?

A I don't have the figures in front of me.

Q I don't want the figures. It's the basic hourly rate.

A Basic hourly rate plus benefits.

Q Does it amount to the same rate that a union contractor would have to pay?

A Basically at the time the job was set up, yes.

Q By the way, were you a union contractor?

A No. Non-union.

Q Were you required to submit wage reports to HUD?

A Yes, weekly. We had to make weekly certified reports.

Q And did you submit such reports?

A Yes.

MR. NEIL: I will ask the clerk to mark these documents Exhibit B and show them to the witness.

(Whereupon Defendant's Exhibit B was marked for identification.)

Q Is Exhibit B a copy of your weekly payroll report to HUD, plus a copy of the back page of one of those reports?

A It appears to be.

MR. NEIL: I think counsel can stipulate that it is such a copy, Your Honor, since he handed it to me.

MR. CENICEROS: Yes, Your Honor. I was going to introduce them. I will stipulate to its introduction.

THE COURT: It is received.

MR. NEIL: We ask that it be received.

THE WITNESS: I have the originals if you want them.

THE COURT: Exhibit B is received.

Q (By Mr. Neil) Mr. Jackson, did you, in fact, pay the prevailing wages, that is, both fringes and the regular rate to your men?

A Yes, we did.

Q And did you so certify or your accountant so certify on these reports?

A Yes.

Q Who did you turn these reports over to?

A They were mailed I believe to Tom Walsh & Co.

Q And he saw to it that they were filed with HUD; is that right?

A That's the way I recall. Now my bookkeepers was authorized to sign those reports and mail them in. So consequently, I didn't mail them myself, my accountant did, but I am sure they went to Tom Walsh.

Q Were you present at any meetings— First of all, let's bring out when this job took place. The payroll records indicate your first week on the job was the week ending June 22, 1971; is that correct?

A That seems to be correct.

Q And the last report is for the week ending November 30, 1971; is that correct?

A That seems to be correct, yes.

Q So that marks the period your men were on the job.

A Right.

\* \* \* \* \*

[Tr. 109-114]

Q When you were meeting with both Walshes and the union people, as you say, the union people were trying to persuade you to become a union contractor; is that right?

A Well, you might put it that way.

Q Did you express to them at these meetings what your problems were in becoming a union contractor?

A Yes, and I am sure they understood the problems.

Q What did you tell them?

MR. CENICEROS: Well, Your Honor, what relevance does this have? They tried to get him to go union. He was telling them his problems.

MR. NEIL: I think, Your Honor, the relevance is —

THE COURT: This is an offer of proof. It isn't being accepted at this time. So I think the objection is preliminary.

Q (By Mr. Neil) What did you [tell] them were your problems?

A Well, basically —

MR. CENICEROS: Excuse me. Whom did you tell?

A Whoever was at the meeting, the union representatives, that I was obligated under contract to do jobs for certain "X" amount of dollars and which couldn't be done at a union scale. I was not talking about the Walsh job. I was talking about other jobs, and they realized this. So the question came, how do I complete my obligations and still find a union contract? This is what the main discussion was, is to devise a way, if we elected to go union, how could we complete our work that was in progress.

Q Was there any discussion of your competition, that is, whether your competition in Salem was unionized or not unionized?

A Yes, there was. When you say competition, in the field of apartment house framing that I was in. I am sure there was discussion on it, because my competition is such we are all non-union. This is where the problem arises.

Q In the Salem area?

A Right, in the Salem area.

Q You consider yourself a framing subcontractor?

A Right.

Q What does framing involve?

A Well, it covers a multitude of sins, but primarily it's considered to be a specialty item. We go from the foundation to the roof.

Q Is that a special type of carpentry work?

A It has become that in recent years. It evolved into such. A general contractor can be a framer. A framer may not be a general contractor, because

he specialized in certain items.

Q Are all carpenters qualified framers?

A They could become qualified framers.

Q But are they?

A I would say no.

Q Is that a specialty within the field of carpentry?

A It has become in certain areas, become a specialty.

Q What was the size of this Oak Hill apartment project? How many units?

A Oh, 56, I believe.

Q And how many men did you have? What variation did the size of your framing crew have on that job?

A Oh, it averaged somewhere between nine to thirteen people. Sometimes we only had one or two, but around nine to thirteen as I recall.

Q Was there any other framing subcontractor or contractor in the Salem area to your knowledge, union or non-union, that had the men to do a job of that size at the time of the Oak Hill project?

A No, not really.

Q Where would the nearest contractor be that would have enough qualified men?

A I presume the Portland area has qualified. There was contractors that are qualified, but not framing contractors.

MR. NEIL: Could he be shown that Exhibit A?

Q Your subcontract is with Tom Walsh 4, Oreg. Ltd.; is that correct?

A Right.

MR. NEIL: That's all. Thank you.



THE COURT: Mr. Cenicerros?

MR. CENICERROS: Your Honor, that was a long offer of proof. I would like to inquire about only one portion of it but still—I will waive my objection to that portion but not to the rest.

THE COURT: Go ahead.

MR. CENICERROS: And the portion I waive my objection to is whether — Well, let me do it this way. I will submit this as an offer of proof in opposition to his, without waiving my objection.

THE COURT: Sure.

#### CROSS EXAMINATION

BY MR. CENICERROS:

Q Mr. Jackson, you are not the only framer in the Salem area, are you?

A No.

Q And there are general contractors in the Salem area that also do framing.

A I am sure there is, because commercial work in Salem is all done by general contractors, and they are all union.

Q And so you have in a job the size of Oak Hill you have competition that could have done the job, the framing part of that job from the general contractors.

A I will rephrase that. There are general contractors in Salem capable of doing that job but not subcontractors.

Q But don't some of the general contractors in Salem

also do framing subcontracting?

A Not to my knowledge. Not to my knowledge. If there is, I don't know who they would be.

Q Is it unusual on a large construction project or the size of Oak Hill for a framer from another part of the State to come in?

A It's been done.

Q Have you done any other work for Tom Walsh?

A No.

\* \* \* \* \*

[Tr. 122-124]

#### REDIRECT EXAMINATION

BY MR. NEIL:

Q Mr. Jackson, did you know at any time during the Oak Hill job or did you believe that you could have paid the fringe benefits to the union trust fund as opposed to the men?

A I don't think I could.

Q Why not?

A I think you have to sign a contract with the union in order to do it. I don't know.

Q I am asking you what your impression was at the time.

A The impression at the time was that I couldn't.

Q You then felt the only thing you could do was pay to the men, right?

A Right, and that's my understanding now. I may be wrong.

MR. NEIL: Thank you, Mr. Jackson. No further questions.

## RECROSS EXAMINATION

BY MR. CENICEROS:

Q But you are not required by the Davis-Bacon Act to pay directly to the men.

A No.

MR. CENICEROS: That's all.

THE COURT: I will excuse the witness.

(Whereupon, the witness was excused.)

MR. NEIL: I understand counsel is willing to stipulate that Mr. Jackson did, in fact, pay the fringes to his men throughout his job.

MR. CENICEROS: Yes, Your Honor. We entered into two stipulations, one based on an examination of Mr. Jackson's payroll records and by our auditors; and when I say an examination, a comparison of the certified payroll records with his regular payroll records. We are prepared to stipulate that he did pay the fringes to the men. Also there was a discrepancy, however, found between the regular payroll records and the certified records, 32 hours, 32 and ½ hours, something like that. We are prepared to stipulate that in the event the Court rules in favor of the Plaintiffs, the audit can be corrected to that extent.

MR. NEIL: So stipulated.

\* \* \* \* \*

Testimony of Earl B. Kirkland

[Tr. 125]

EARL B. KIRKLAND

was thereupon called as a witness on behalf of the

Plaintiffs and, having been first duly sworn on oath, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. CENICEROS:

Q Mr. Kirkland, what is your occupation, sir?

A I am Executive Secretary of the Columbia Pacific Building and Construction Trades Council, AFL-CIO.

Q In that capacity, did you have occasion in June of 1971 to talk with the Defendant here, Mr. Tom Walsh?

A Yes.

Q Did you have a meeting on or about June 21st, 1971, in your office with Mr. Walsh about an Oak Hill job that was going on in Salem?

A Yes.

\* \* \* \* \*

[Tr. 126-127]

Q Now at the meeting in your office Mr. Walsh was present and Mr. Stanfill was present. Was anyone else present at the first meeting?

A I don't believe so.

Q Were the problems on the Oak Hill job referred specifically to Lloyd Jackson, the framing contractor, and a plumbing contractor called Dayton Plumbing? Is that not true?

A Yes.

Q And did you inform Mr. Walsh of the consequences of having a non-union subcontractor on the job?

A Yes, I did.

Q Did you specifically refer to the subcontractor clause?

A Yes.

Q What did you tell him in regards to the subcontractor clause?

A Well, I called his attention to the agreement. I read him the part of the agreement, subcontractor clauses, the part involving wages and fringes, which he said he understood and knew the problem.

Q What did you tell him his responsibilities were under that, if anything?

A I told him his responsibilities were to live up to that agreement, which called for all his subcontractors to be on an agreement with the respective craft unions and pay the proper wages and fringe benefits.

Q Did you tell him to whom the payments of the fringe benefits were to be made?

A Into the various trusts, of course.

Q Did he indicate to you at that time that the fringes were going to be paid to the men of Lloyd Jackson?

A Well, he indicated that he knew that he was also guided by the Davis-Bacon act because of it being a HUD job and that proper wages and fringe benefits would be paid the non-union people.

Q Did he indicate that in his opinion the payment of the fringes to the men would satisfy his obligations under the union contract?

A No.

\* \* \* \* \*

[Tr. 133-134]

Q Are you aware of the fact that the union trust funds will not accept contributions directly from a non-union employer?

MR. CENICEROS: Your Honor, we will stipulate to that.

MR. NEIL: Okay.

Q Are you aware of that?

A Would you repeat your question?

Q Well, counsel said he will stipulate to the fact that the union trust fund, the carpenters union trust fund, will not accept contributions directly from a non-union employer, only if they are made via a signatory to the agreement such as Tom Walsh.

A Yes, I am aware of that.

Q Did you tell Walsh that at the June 21 conference?

A No, I don't think I did.

\* \* \* \* \*

Testimony of Allen W. Emrick

[Tr. 142]

ALLEN W. EMRICK

was thereupon called as a witness on behalf of the Plaintiffs and, having been first duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CENICEROS:

Q Mr. Emrick, how are you employed?



A I am employed by the U. S. National Bank.

Q And what is your function with the U. S. Bank?

A A trust officer.

Q And in your capacity as trust officer, you handle the Oregon - Washington Carpenters - Employers trust funds, the various funds.

A Yes.

Q They are the Health and Welfare, Pension, Vacation, Apprenticeship Training, and in this case the C.I.A.F., Construction Industry Advancement Fund.

A Yes.

\* \* \* \* \*

[Tr. 146-147]

#### CROSS EXAMINATION

BY MR. NEIL:

Q Mr. Emrick, you are the administrator of these trusts; is that not technically your title?

A That's right.

Q Do the trusts accept contributions from non-union employers directly?

A Anybody who is signatory to the trust funds.

Q In answer to my question, they do not.

A No. The answer is, they have to be signatory to the trust. There is a bargaining agreement.

Q Is there a method, however, by which non-union contractors' employees, their fringe benefits can be paid into the trust fund even though the non-union contractor is not a signatory?

A No, because they must be signatory to an agreement in order to participate under the trust.

Q Haven't you seen report forms where the employees for whom the contributions are being made are employees of a non-union sub, but the report is being made in the name of a signatory, a union contractor?

A Well, any report that we have that we would put through would be, as far as the employer is concerned— The name appearing on the report form we would check, and that has to be a signatory. Our instructions are strictly to process only signatory employer reports.

Q Okay. I understand that, but are you aware that some of the employees are, in fact, non-union contractor employees who are being treated as signatory employees for purposes of reporting?

A Well, we wouldn't know whether they are union or non-union necessarily.

Q You don't. Okay.

A Because we don't have that facility.

\* \* \* \* \*

[Tr. 149-156]

Q Now turning to these eligibility requirements, we have five trusts here.

A Yes.

Q The first one is the Health and Welfare trust. That's sort of a medical trust; is that right?

MR. CENICEROS: Your Honor, I think I am going to object to this. I don't see the relevance. If he is going to make the payments by the employer on the trusts, conditioned on the eligibility, this is not the suit to do so, and I don't think

that's relevant as a matter of law. What is the eligibility? What does he intend to show by the eligibility here? The only thing he can show is that they are not eligible. So what. This is not the forum to determine the reasonableness or the nonreasonableness of eligibility requirements.

MR. NEIL: We went through this before, Your Honor, and I think I laid before you at that time my position that this goes—not that it is of itself a defense but it simply goes to the equitable question of whether it is equitable to require this Defendant to make a payment into this trust when, first of all, the fringes have already been paid by Jackson to his men and, secondly, as I would prove by this witness, the payments will not accomplish any substantial benefit for Jackson's men and simply will amount to a penalty upon Walsh for not doing what the Plaintiffs say he should have done.

MR. CENICEROS: Well, let me respond to that, Your Honor. This is equity, but we don't throw away the rule book in equity. Equity follows the law.

THE COURT: Well, equity also has a maximum for any possible purpose.

MR. CENICEROS: That's true, but still this is not—I would call this just kind of a blatant appeal to sympathy. We regret that Mr. Walsh might have to pay these fringes twice, but this is a situation of his own making, not of ours.

THE COURT: I understand your several po-

sitions. I will permit you to offer this under the rule.

MR. NEIL: Thank you.

Q As to the Health and Welfare trust, which is for medical insurance and that kind of thing, right?

A Right.

Q What are the eligibility requirements for a man to participate in the benefits of that trust?

A Well, he has to acquire an hourly contribution first in order to establish his first eligibility of 250 or more hours in the first three of the last four months preceding a claim. Now, if I may use an example. May I have that opportunity, Your Honor?

THE COURT: Sure.

A January, February, March. Say the man in those three months has worked a total of 250 or more hours. Now his first qualification for eligibility would be—April is a light\* month because they report the March hours. Say they were all divisible by 83½ hours and made 250 exactly. Then April would be the lag month. Then he would be good for May, June and July. That's one test, which is called the 250 hour test. The second test, 1,000, is because of the pattern of the industry, the employment picture.

Q What is the second test?

A Is 1,000 hours in the first 12 of the last 13 months. So that would—In other words, the same three-month eligibility, but those hours, the composition

\* Reporter's error—word should be "lag."



of them determines whether or not the man is eligible.

Q Must he meet both of those requirements?

A No, just one, and that's why there is two, because the pattern of work many times is seasonal. It gives him the additional protection or the opportunity to qualify.

Q Let's say that the Court in this case ordered or decided this case in a fashion that required the payment of some contributions into the fund, this fund, right now for work done in 1971 and that those contributions were the only contributions for those particular men, no others. Would they be eligible right now for—assuming they met these requirements of 250 hours in a three-month period—

MR. CENICEROS: Your Honor, I object. If you are going to go into a hypothetical, let's bring it down to this case.

MR. NEIL: That's what I'm trying to do.

MR. CENICEROS: It's a little bit more involved than that.

Q (By Mr. Neil) Are you able to say that any contributions ordered into the trust in this case would or would not be a benefit to Mr. Jackson's employees?

A I would have to check the actual eligibility board for the period covered. In other words, we would have to compile the hours if the monies were paid in to see whether the total hours in this given period mentioned would give them 250 hours or more or perhaps some other employers would give them

maybe the 1,000 hours. Many of these employees work for more than one employer in a month.

Q Now just a minute, Mr. Emrick. That's very true, but most of the people you are dealing with are union members, aren't they?

A Yes, the majority are.

Q Let's go to the second fund, the Pension fund. What are the requirements of eligibility for a pension?

A They must have 12 pension credits, meaning that they must have 12 years of pension credit, or for each quarter of a pension credit is 300 hours, or a total of 1200 hours for one full pension credit.

Q So there would have to be a period of 12 years where payments for the employee have to be made.

A It isn't exactly in that fashion, because they get credit for the time they worked prior to the establishment of the fund as long as they have 1200 hours. Now as the calendar moves around from year to year, they naturally get in more service because contributions were effective as of June 1, 1962 and the fund itself was funded to establish and build up the monies. So the first pensions were actually paid in 1963, but as the calendar goes, obviously they get more contributions into the trust.

Q There wouldn't be any credit, however, prior to the effective date of the trust for non-union employees.

A There was no difference with respect to that. The point of it is they could prove employment, and they had about three or four different criteria They could use, like their W-2 tax forms, state-



ments from the employer as to—in other words, an affidavit that the man actually performed the work and it was a carpentry type of work.

Q How about the Vacation fund?

A The Vacation fund?

Q What are the eligibility requirements?

A There is no eligibility requirement. It's whatever contributions are paid in on behalf of the man. He is entitled to those contributions, and there are earnings from the investments. Then it is prorated accordingly by the first dollar in.

Q Must an employee apply for the vacation fund?

A Pardon me?

Q Must he apply?

A No. As long as we have the record of their enrollment card. That is a card which shows the family composition and any— In fact, we even go to the point there of sending—if we have no address for a particular employee, we send it to the various local unions to find out where the man at least has had an address to forward it to him.

Q Do you know whether local unions check addresses of non-union employees for you?

A Well, I wouldn't know that. That's out of our area.

Q The construction industry is not a fund that pays directly to the employee.

A No. That's a lump sum fund.

Q And the Apprenticeship fund does not pay directly to the employee.

A No.

MR. NEIL: That's all.

THE COURT: Anything further?

MR. CENICEROS: Yes.

### REDIRECT EXAMINATION

BY MR. CENICEROS:

Q On the Health and Welfare thing, if, for example, this Court were to order the payment of these contributions for a period of 1971 and a claim was made, would that claim be paid?

A If it provided eligibility, yes.

Q If other eligibility requirements were made?

A Right.

Q However, if no contributions were made by the employer and the employee gets nothing—in other words, unless he has built up—

A There must be contributions received.

Q Now do you go to quite a lot of effort to try and find the individuals entitled to the vacation fund?

A Yes.

Q Now on the pension fund the employee has how long a period of time to accrue his eligibility?

A Well, on the pension fund, if he has his pension credits, if he has not yet— There is a period which is called the breaker, which is a three-year period in which the employee must earn what is entitled a quarter of credit in that period of time, and that means 300 hours or more—in other words, they earn multiples of 300—then they can earn as high as a year and a half credit, up to 1800. Five quarters for 1500, six quarters would be 1800 or more hours.

Q Weren't these eligibility requirements for the pension just recently liberalized considerably by the trustees?

A Yes, they were, as of April 1, 1973.

Q And the trustees of these funds are an equal number of management trustees as labor trustees.

A Under the Taft-Hartley, the labor management act.

Q What was your answer?

A The answer is yes.

Q On any of these funds, Health and Welfare, Pension, Vacation, is a beneficiary required to be a union member?

A No.

\* \* \* \* \*

#### Testimony of Roy W. Coles

[Tr. 158-159]

ROY W. COLES

was thereupon called as a witness on behalf of the Plaintiffs and, having been first duly sworn on oath, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. CENICEROS:

Q Mr. Coles, what is your occupation?

A I am the Executive Secretary of the Oregon State Council of Carpenters.

Q Were you in that position in 1971?

A Yes, I was.

Q I would like to clarify a few things about the eligibility requirements on the Health and Welfare.

MR. CENICEROS: I would bring this under

a counter offer of proof, not waiving.

THE COURT: Okay.

Q (By Mr. Cenicerros) Mr. Emrick testified that the primary requirement was 250 hours for which contributions were paid; is that correct?

A That's correct.

Q Now assume that 250 hours were accrued in one or more months in 1971, no contributions were made. If the contributions were later collected as a result of a lawsuit or paid for some reason or other, would an individual who earned these hours be compensated for a medical claim?

A Yes, during the period that he was eligible. Then that would be decided at the Administrator's office.

Q This would be the case though at the time he had not made a claim against the trust fund.

A That's correct.

Q Even though he made a claim two years later.

A With substantiated evidence of a claim.

Q Medical evidence.

A Right.

\* \* \* \* \*

[Tr. 163-164]

Q That was another matter. All right. Now, Mr. Coles, the Defendant has raised a defense of delay. The job ended pretty much undisputed in November of 1971, and the first demand letter to Mr. Walsh—formal demand letter from Mr. Bailey to which he has testified went out in November 1972, a period of about a year delay. Is there any explanation for that delay?

A Yes, there is. Mr. Kirkland and Mr. Stanfill, representing the Mid-Pacific Portland District Council or District of Building Trades, and Stanfill, the Oregon State Building Trades Council, having personal knowledge of all the implications about our problems and being more quite well acquainted with Mr. Walsh, indicated to me that they were discussing— continuing to discuss this problem with him, and there was a good possibility that there would be some settlement, a resolve to the dispute.

Q And when did you finally conclude that no settlement was forthcoming?

A Quite apparent it was in the Fall of '72.

Q Now are you also a member of the Delinquency Committee?

A That's correct.

Q Now what is the function of the Delinquency Committee?

A When delinquency matters are brought to the attention of the trustees by the administrator's office, they are acted on seriatim. The Delinquency Committee makes a decision as to how they will be processed, and most generally an audit is requested of the books. If no response from the employer up to that point, most likely co-legal counsel are asked to intervene. And in some cases it goes to court.

Q Who are the legal counsel?

A The first firm is Baily, Doblle & Cenicerros. The second party I only know Mr. John Hill.

Q Is the Delinquency Committee composed of an equal

number of management as well as labor trustees?

A That is correct.

Q And was this case considered by them?

A Yes, it was.

Q And obviously as a result after this consideration it was referred to co-legal counsel.

A That's correct.

\* \* \* \* \*

[Tr. 166]

### CROSS EXAMINATION

BY MR. NEIL:

\* \* \* \* \*

Q Is it true, Mr. Coles, that the trust funds would not accept payments directly from a non-union contractor such as Jackson?

A That's correct.

Q And the only way they will accept payments is by having him make the payments through a union contractor such as Tom Walsh & Co.

A That's correct.

\* \* \* \* \*

[Tr. 167]

Q Well, I don't find it in your deposition. If your counsel knows where it is, he can point it out to me. Were you even aware at the time of these meetings that Jackson was paying for these men?

A No, I wasn't.

Q To elude to my previous question again I want to ask you, were any demands made upon Walsh in meetings in which you were present that he must



pay into the trust funds?

A Yes, there was.

\* \* \* \* \*

[Tr. 168]

A Your question was, "But you would have accepted him if Walsh had paid them even though Jackson was not a union sub; is that correct?" I said, "That's right."

\* \* \* \* \*

[Tr. 172-175]

Q I believe you testified that the trust delinquency committee made the determination as to whether or not to bring suit for any particular contributions. Is there an earlier determination made at the union level?

A Yes, there is.

Q And by whom at the union level?

A The matter is referred to the trustees on the delinquency committee.

Q In other words, the carpenters union involved could decide they don't want to pursue this matter and, therefore, not request the delinquency committee of the trust to take action; is that right?

A Would you restate that, please?

Q I am asking if the union decided they didn't want to pursue a matter involving trust contributions, they could simply decide not to do so and not to request the Delinquency Committee of the trust not to pursue it, and by not requesting it, it won't get pursued; is that correct?

A That works both ways, with the employers' side

also.

Q So there is really two parties deciding whether to pursue a particular matter, one is the union; and assuming they want to pursue it, then the Delinquency Committee has to decide it.

A That's correct.

Q You mentioned the Delinquency Committee considering this matter. When did they consider that?

A I don't have that. I am sure the administrator could find those records there. They are all in minutes.

Q Would it have been shortly prior to the lawsuit being commenced?

A I don't recall when the first action was taken in the Delinquency Committee.

Q Did you sit on the Delinquency Committee?

A Yes. If I had the minutes, I could recall.

MR. NEIL: Nothing further.

## REDIRECT EXAMINATION

BY MR. CENICEROS:

Q Mr. Coles, would you turn to Page 13 of your deposition. On cross examination, counsel referred you to Page 11, asking you if any demand had been made on Tom Walsh. Were you not also asked on Page 13, by Mr. Neil: "QUESTION: And it's your recollection that the main subject of discussion was just that Walsh ought to pay into the trust fund for Jackson's men; is that right? ANSWER: Under the terms of our agreement, yes. QUESTION: And was command\* made upon him to do so? AN-

\* Reporter's error—word should be "demand."

SWER: I would say it was requested he take care of his obligation. QUESTION: What was it phrased? That, Walsh, you ought to begin making payments to the trust fund for Jackson's men? ANSWER: Possibly not in those exact words. He had no other reason to meet with Tom Walsh." Do you recall making that testimony?

A Yes, I do.

Q Now, Mr. Coles, the final say on whether legal action is brought is by the Delinquency Committee, is it not?

A Correct.

Q If the union decides they don't want to pursue it and the Delinquency Committee says pursue it, the matter is pursued, is it not?

A Most generally, yes.

Q Now in addition to the matter being referred to co-legal counsel for processing, isn't it another step that each member of the Delinquency Committee sign a request, an authorization for legal action?

A That's correct.

Q And that procedure was followed here.

A That's correct.

Q So it's a two-step process. First the decision to refer to counsel, and then counsel refers it back to the Delinquency Committee if it needs to go to suit. The Delinquency Committee then in writing, every member signing, authorizes it.

A One from each side signs the authorization.

\* \* \* \* \*

[Tr. 179-180]

Q Mr. Coles, I show you what has been marked as Plaintiffs' Exhibit 9, which are copies of a document entitled Authorization for Legal Action. Would you identify those to the Court, what they are.

A This is the Authorization for Legal Action—do you want me to read it?

Q Just generally what they are.

A It's an authorization to take action against a contractor deemed delinquent. This is not my signature as the trustee that invoked this authorization.

Q Those are copies, but how many members of the Delinquency Committee do those represent?

A This happens to be the signature of another member of the Delinquency Committee that signed this authorization, Mr. Hansen.

Q And one was signed by Mr. Carl Halvorson. This was on September 16th.

\* \* \* \* \*

[Tr. 180-181]

Q And another was signed by—which trustee was that?

A That's Carl M. Halvorson.

Q September 16, 1972; is that correct?

A That's right.

Q And another was signed by yourself September 19, 1972; is that right?

A That's right.

Q And another was signed September 18, 1972, by Swan Nelson.

A That's correct.

Q And Ralph who?

A Ralph Mergen, Associated General Contractors, as trustee.

\* \* \* \* \*

**Testimony of Thomas J. Walsh, Jr.**  
(Recalled)

[Tr. 214-215]

Q You have already testified, I believe, that you were not told at either the June 21st or June 30 meeting, or any other meeting during the job, that the fringes for Jackson's men could be paid to the trust via yourself as a signatory, Tom Walsh & Co. as a signatory to the agreement; is that correct?

A That is correct.

Q Did you know that at the time?

A No.

Q When did you first learn that the union would accept contributions to the trust in that fashion from non-union employers?

A Oh, some substantial time after this litigation started it came out during that.

Q By reading one of the depositions taken in this case?

A Yes.

Q Had you known that at the time of the job, June 21st and on, would you have taken any different course of conduct with respect to the fringes than was taken? That is, Jackson paid his men direct.

A Yes. I would have made arrangements with Jackson had I known what I know now. The payment of that fringe benefit into the trust for the benefit

of the men would have satisfied Davis-Bacon. It would have certainly satisfied our requirements under HUD. It would have kept everybody happy, and there would have been no additional costs. Everybody would have agreed. We are talking about the same per hour fringe benefit cost, and the difference was solely, did it go to the men in cash or did it go to an approved benefit program for the men?

Q How could you have arranged that with Jackson?

A We could have done it one of two ways. Either that we would have withheld from the amounts we were paying him under his subcontract, prepared the reports ourselves and filed them with the trusts and then show a deduct on the reconciliation of the Lloyd subcontract, or we could have had Lloyd prepare the reports, send them to us with his check for our adding our name as the signatory to the agreement at the bottom.

\* \* \* \* \*

[Tr. 220-221]

Q Getting back, if you would have been told about this, as you claim you were not, you would have had to tell them either, No. 1, pay with a Tom Walsh & Co. check because that was the only signatory, or you couldn't have paid at all because Lloyd Jackson couldn't pay; and according to your position now, Tom Walsh 4, Oreg. Ltd., is not bound by the labor agreement, and they couldn't accept a check from him either.

A You are saying that they couldn't accept a check.



I don't know that, certainly didn't know it. What I am saying is—and maybe you can ask me some more questions and I could make it clear—had we known, had we been advised that that trust fund for non-union employees constituted a bona fide benefit program, there was absolutely no cost disadvantage to using it. It was both a viable and a very attractive alternative. We would have used it. I can't see that the mechanics would have been all that difficult. If it automatically came to this, if they would not accept Jackson's check, the TW4 check, if they would have only accepted a Tom Walsh & Co. check, then Tom Walsh & Co. would have billed Tom Walsh 4 for that amount, then reimbursed by Tom Walsh 4 and then issued a Tom Walsh & Co. check, if that was the only way to make the payment. Had I known about it, I would have gotten the problem solved.

\* \* \* \* \*

# PLAINTIFFS' EXHIBIT 1

## MEMORANDUM AGREEMENT

It is agreed between the undersigned,  
TOM WALSH AND CO.

hereinafter called "Employer", and the Oregon State Council of Carpenters; Southwest Washington District Council of Carpenters; Portland and Vicinity District Council of Carpenters and Piledrivers, Bridge, Dock and Wharf Builders of the United Brotherhood of Carpenters and Joiners of America, hereinafter called "Union", in consideration of services performed and to be performed by carpenters for the Employer as follows:

1. The Employer agrees to comply with all the terms including wages, hours, and working conditions and rules set forth in the Carpenters Master Labor Agreement for Oregon and Southwest Washington dated May 1, 1968 (herein Master Agreement), and the agreements establishing: (a) the Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund, dated January 1, 1956 as amended November 5, 1956 and August 1, 1968; (b) the Oregon-Washington Carpenters-Employers Pension Fund, dated December 19, 1962 as amended August 1, 1968; (c) the Oregon-Washington Carpenters-Employers Apprenticeship and Training Trust Fund, dated December 28, 1965 as amended August 1, 1968; (d) the Oregon-Washington Carpenters-Employers Vacation Saving Trust Fund, dated August 1, 1968; the Con-

struction Industry Advancement Fund, (dated June 1, 1967) and any amendments, modifications, extensions, supplementations and renewals of the Master Agreement and the Trust Agreements and any agreements establishing other benefits or plans negotiated by the parties signatory to the Master Agreement. The Master Agreement and the Trust Agreements are attached hereto, and, except as to such terms as are specifically excluded by this Memorandum Agreement, are hereby specifically incorporated by reference and made a part of this Memorandum Agreement as though set out in full herein.

2. The employer agrees to pay to the Oregon-Washington Carpenters-Employers Health and Welfare Trust Fund, the Oregon-Washington Carpenters-Employers Pension Trust Fund, the Oregon-Washington Carpenters-Employers Apprenticeship and Training Trust Fund, the Oregon-Washington Carpenters-Employers Vacation Savings Trust Fund, and the Construction Industry Advancement Fund, the sums in the amounts and manner provided for in the Master Agreement and the Trust Agreements and the rules and procedures adopted by the Trustees of the Trust Funds and all amendments, modifications, extensions, supplementations, and renewals thereto.

3. The Employer agrees that he does irrevocably designate and appoint the Employers mentioned in the Oregon-Washington Carpenters Health and Welfare Trust Agreement, the Oregon-Washington Carpenters-Employers Pension Trust Agreement, the Oregon-Washington Carpenters-Employers Apprenticeship

ship and Training Trust Agreement, the Oregon-Washington Carpenters-Employers Vacation Savings Trust Agreement, and the Construction Industry Advancement Fund, as his attorneys-in-fact for the selection, removal, and substitution of Trustees as provided by or pursuant to the Master Agreement or Trust Agreements.

4. It is agreed that all provisions in the Master Agreement covering or relating to the subject of strikes, lockout, jurisdictional disputes and procedure of settlement of grievances and disputes shall be excluded from this Memorandum Agreement and shall not be binding upon the Employer or the Union. It is agreed that in all cases of a claimed violation, misunderstanding, dispute or difference regarding the application or interpretation of this Memorandum Agreement or the Master Agreement or the Trust Agreements, or any amendments, modifications, extensions, supplementations and renewals thereto, the Union shall have the right to call or engage or assist in a strike, shutdown, work stoppage or withdrawal of services and the Employer shall have the right to engage in a lockout. The provisions of this paragraph shall not apply to the enforcement of the terms of Paragraph 5 of this Memorandum Agreement or to the applicable subcontracting provisions of the Master Agreement except to the extent permitted by law.

5. If the Employer contracts or subcontracts any work covered by this agreement to be done at the job-site of the construction, alteration or repair of a building, structure or other work to any person or propri-



etor who is not signatory to this Memorandum Agreement or the Master Agreement, the Employer shall require such subcontractor to be bound to all the legally enforceable provisions of this Memorandum Agreement and the Master Agreement, or the Employer shall be responsible and liable for the payment of all sums of money required by all terms of said Agreements, and which would be owed by the subcontractor were the subcontractor bound by the legally enforceable provisions of said Agreements.

6. This Memorandum Agreement shall be binding upon the heirs, executors, administrators, purchasers, and assigns of the Employer and shall be binding upon the Employer regardless of a change of entity, name or association or joint venture and shall bind any entity or venture who is a principal, associated with the Employer. If the Employer is a corporation, or other business entity other than an individual, the individual signing this agreement on behalf of the Employer acknowledges that his signature binds himself individually as well as the corporation or other business entity.

7. This Memorandum Agreement shall remain in full force and effect until May 31, 1971 and shall continue from year to year thereafter unless either party shall give written notice to the other of a desire to change or cancel it at least sixty days prior to May 31, 1971, or May 31 of any succeeding year. The Employer and the Unions shall be bound by any renewals or extensions of the Master Agreement and the Trust Agreements, or any new agreements, unless an

appropriate written notice is given to the other party at least sixty days prior to May 31, 1971, or any subsequent year of their intent not to be bound by any new, renewed or extended agreement.

Signed this 22 day of September, 1969.

UNION:

District Council of Carpenters of Portland & Vicinity

/s/ *Swan Nelson*

Authorized Signature

EMPLOYER:

TOM WALSH AND CO.

Address: 2839 S. W. 2nd

Town: Portland, Oregon

Telephone No.: 222-4375

/s/ *T. J. Walsh*

Authorized Signature



**PLAINTIFFS' EXHIBIT 7**

**CARPENTERS  
MASTER  
LABOR AGREEMENT**

THIS AGREEMENT, made and entered into this first day of June, 1971.

Between

OREGON-COLUMBIA CHAPTER

THE

ASSOCIATED GENERAL CONTRACTORS  
OF AMERICA, INC.

EUGENE CONTRACTORS ASSOCIATION  
ACOUSTICAL CONTRACTORS ASSOCIATION  
OF OREGON, INC.

and

OREGON STATE COUNCIL  
SOUTHWEST WASHINGTON DISTRICT  
COUNCIL

of the

UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA

**DEFINITIONS**

- A. The term "Association" as used herein shall mean the Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., Eugene Contractors Association, Acoustical Contractors Association of Oregon, Inc. A list of members is set forth in Schedule "B" or any supplements thereto.

- B. The term "Employer" as used herein shall mean any individual, partnership, firm or corporation signatory, or who becomes signatory, to this Labor Agreement.
- C. The term "Union" as used herein shall mean the Oregon State Council and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, acting for all of their local Unions, as set forth in Schedule "C" attached hereto.

**Purposes of This Agreement**

The purposes of this Agreement are to promote the settlement of labor disagreements by conference, to prevent strikes and lockouts, to stabilize conditions in all types of construction in the area affected by this Agreement, to prevent avoidable delays and expense, and generally encourage a spirit of helpful co-operation between employer and employee groups to their mutual advantage.

**ARTICLES OF AGREEMENT**

**Article I**

**TERRITORY**

This Agreement shall cover the entire State of Oregon, and the following area of the State of Washington: The counties of Klickitat, Skamania, Clark, Cowlitz, Wahkiakum and that portion of Pacific County south of a straight line made by extending the

north boundary line of Wahkiakum County west to the Pacific Ocean.

## Article II WORK AFFECTED

Section 1. This Agreement shall govern all types of construction work coming within the jurisdiction of the United Brotherhood of Carpenters and Joiners of America as recognized by the AFL-CIO Building and Construction Trades Department.

Section 2. To clarify the scope of this Labor Agreement, and to thereby avoid future misunderstanding, utilities, highway and heavy construction work is defined as including, but not limited to the following: Construction and reconstruction of roads, streets, highways, alleys, sidewalks, guard rails, fences, parkways, parking areas, athletic fields, airports, railroads, street railways, bridges, overpasses, underpasses, grade separations, grade crossings, track elevations, elevated highways, sewers, water mains, foundations, piledriving, sanitation projects, reservoirs, dams, dikes, levees, revetments, channels, aqueducts, channel cutoffs, jetties, breakwaters, harbor developments, docks, piers, abutments, retaining walls, transmission lines, pipelines, duct lines, subways, shafts, tunnels, excavation of earth and rock, clearing and grubbing, land leveling, quarrying, industrial plant construction other than building construction as defined below; including operation, maintenance and repair of land and floating plant equipment, vehicles and other facilities used in connection with the de-

scribed work and service, and all other work of similar nature.

Building construction work shall cover, but *not* be limited to, the construction of residential, commercial or industrial structures, and the on site work necessary for assembly, erection and installation of facilities and equipment in or on such structures, including any and all modifications, additions and repairs thereto.

It is mutually understood and agreed that this Section 2 becomes null and void immediately upon the Association effecting the deletion of similar work definitions from all other labor agreements negotiated by the Association.

Section 3. The terms of this Agreement shall also apply to that work performed at temporary facilities, such as fabrication yards and/or assembly plants located at or adjacent to the construction site, which are integrated with and set up for, the purpose of servicing the construction project or projects; rather than to serve the public generally.

Section 4. See Carpenters, Millwrights, Piledrivers Schedules "A" for the appropriate wage rates and character of work.

Section 5. Craft jurisdiction is neither determined nor awarded by classifications and/or scope of work appearing in this labor Agreement.

## Article III

## EFFECTIVE DATE — DURATION — MODIFICATION

Section 1. When executed by the parties hereto, the terms of this Agreement shall become effective as of June 1, 1971, and shall remain in full force and effect until and including May 31, 1973, and thereafter as provided in this Article.

Section 2. Any party hereto desiring termination, modification or changes in this Agreement to take effect subsequent to May 31, 1973, or to take effect for any agreement year subsequent to May 31, 1973, shall serve written notice on the other party at interest on or before March 1, prior to the end of each such agreement year, requesting negotiation.

If no such notice is given, this Agreement shall continue in full force and effect from year to year.

## Article IV

## SUBCONTRACTORS CLAUSE

If an employer, bound by this Agreement, contracts or subcontracts, any work covered by this Agreement to be done at the job site of the construction, alteration or repair of a building, structure, or other work to any person or proprietor who is not signatory to this Agreement, the employer shall require such subcontractor to be bound to all the provisions of this Agreement, or such employer shall maintain daily records of the subcontractors employees job site hours, and be liable for payment of these employees wages, travel, Health-Welfare and Dental, Pen-

sion, Vacation, Apprenticeship and CIAF contribution in accordance with this Agreement.

The Union agrees to notify the employer, person or proprietor within thirty (30) calendar days of any delinquent payment for wages, travel, Health-Welfare and Dental, Pension, Vacation, Apprenticeship and CIAF contributions owed by the subcontractor, and to further issue a certificate to the employer when these payments have been made. (Clarification: With respect to fringes the 30 day period starts on the day after the report is due to the trust administrator.)

No work will be let by piecework, contract or lump sum direct with a journeyman, apprentice or trainee for labor services.

NOTE: See Article V, Section 4(e), Pre-Job Conference.

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